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What is the Effect of the Taft-Hartley Labor Act?

By ARTHUR L. STERN *of the New York Bar and Labor Expert for Nixon, Hargrave, Middleton and Devans, Rochester, N. Y.*

THERE seems to be no doubt but that much of the opposition to the Labor Management Relations Act, 1947, commonly known as the Taft-Hartley Act, results from a lack of knowledge or misconception of the purposes and effect of that Act. Even its staunchest supporters recognize that amendments to the Act are necessary, both for purposes of clarifying its provisions and to accomplish its stated purposes. But generally labor and management alike, interested in promoting industrial peace and the public welfare, would support in principle most of the Act's provisions, if its purposes and effect were clearly understood.

In this and two succeeding articles some of the principal provisions of the Act will be discussed briefly for the purpose of pointing out the changes in our labor laws which result therefrom and the purposes intended to be accomplished thereby. It is impossible here, in the space available, to discuss each of the provisions of the Taft-Hartley Act which effect changes in the labor laws. For a detailed discussion thereof, reference is made to 173 ALR 1401–1445. But it is possible here to make reference to those provisions of the Act which are most important to labor, management, and the public generally. In this article questions involving representation proceedings will be considered. In the second article unfair labor practice sections of the Act will be discussed, and in the final article reference will be made to specific provisions, such as enforcement procedures, suits by and against labor organizations, "non-communist" affidavits and financial reports, conciliation and mediation, restrictions on check-off and on political contributions, and finally questions involving the right to strike.

Representation Proceedings

Since 1935 when the Wagner Act became law, one of the most cherished rights of employees has been the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and

to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. This right remains inviolate under the Taft-Hartley Act. To insure employees of an opportunity to exercise this right free from coercion or undue influence by management or by labor organizations, and to clarify the duties and obligations of everyone who may be involved in making possible the attainment of this right, specific additions to the Wagner Act have been made in the Taft-Hartley Act.

I. Appropriate Bargaining Unit

Obviously, if employees are to have the right to bargain collectively through a representative designated or selected for that purpose by a majority of them, it is necessary to determine in each instance what group of employees is to be given the right of selection. Shall it be all of the employees in a particular plant, shall production workers and office workers be given separate rights of selection, or shall smaller units within a production or office or engineering department be given separate rights of selection? Under the Wagner Act the National Labor Relations Board was given sweeping and almost unlimited powers to determine the "appropriate unit" within which such selection should be made; under the Taft-Hartley Act the Board is still given broad discretionary powers to decide in each case whether a unit is appropriate for bargaining purposes, "in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act." But Congress believed that limitations should be placed upon the Board's absolute discretion in making such unit determination. These limitations, and the reasons therefor, are:

1. No unit shall be deemed appropriate if it includes both professional and non-professional employees unless a majority of the professional employees vote for inclusion in the unit.

Because of the nature of their work, their hours of work, their basis of payment, and other factors, professional employees often have interests and problems that vary from those persons in non-professional work. Usually professional employees are far outnumbered by non-professional workers in any plant or department. To insure professional employees of the right to select their own representatives, to guard against the possibility of their representation by an agent selected by non-professional personnel and not wanted by a majority of the professional employees, provision is made for their separate representation unless a majority of them indicate their desire to be included with the non-professional employees in one unit.

There are difficulties which may arise in the application and

interpretation of this provision (173 ALR 1406, § 8). Perhaps clarifying amendments may be advisable. But with the purpose and intent, to guarantee to numerically small groups of particular employees the right to select their own bargaining agent, there can be no quarrel.

2. The Board shall not decide that any craft unit is inappropriate for bargaining purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation.

Under former Board decisions a craft unit ordinarily would not be segregated from a larger unit theretofore established. As a result, if an entire department or plant was once designated as a proper bargaining unit, it was exceedingly difficult thereafter for a small number of employees in a particular craft or skill to select their own representatives separate from the department or plant as a whole. To insure to this separable group the fullest freedom in exercising the right to select a bargaining agent, provision is made for separate representation, regardless of past unit determination, unless the employees in the craft group wish to be included in the same unit with employees not in their same craft.

The considerations here are the same as in connection with professional employees, to guarantee to numerically small and separable groups of employees freedom of choice of bargaining representative. Although clarifying amendments may become necessary (173 ALR 1407; § 8.5), no change in basic intent seems warranted.

3. No unit shall be deemed appropriate if it includes with other employees plant guards, whose duties are to enforce against employees and others rules to protect the property of the employer or to protect the safety of persons on the employer's premises. No union that admits to membership, or which is affiliated with an organization that admits to membership, employees other than plant guards shall be certified as a representative of a unit that includes plant guards. In other words, plant guards must be represented, if at all, by an independent union of their own.

The purpose of this provision seems obvious. Plant guards are given the responsibility for protecting persons and property, and to fulfill that responsibility they must not be subject to or subservient to unions composed of the very men in respect to whom they may be called upon to act.

4. Supervisory personnel are not "employees" under the Taft-Hartley Act, and hence have no right to bargain collectively with their employer.

Prior to enactment of the Taft-Hartley Act one of the

most troublesome questions in labor relations involved the right of supervisory employees to bargain through a union with their employer (173 ALR 1407; § 10). Congress determined that supervisory personnel are "traditionally regarded as part of management," and that as such they should not be represented by labor organizations composed of or subservient to the very men they were hired to supervise.

5. The extent to which employees have organized shall not be controlling in determining an appropriate unit.

The determination of an appropriate bargaining unit should depend upon what unit will give employees the fullest freedom in exercising their rights to self organization. It should not, and henceforth cannot, depend upon the success or failure of any particular labor union to organize a particular group or groups of employees.

II. Petitions in Representation Proceedings

The method recognized under the Wagner Act for determining a bargaining agent was

"You said we'd just spend a quiet evening at home!"

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Cost of Merchandise	None
Gross Profit	None
Expenses continuing during shutdown	$ 7,000
Net Loss	$ 7,000
Add. Anticipated Profit Prevented	2,000
Total Loss	$ 9,000

AFTER FIRE
WITH Business Interruption Insurance

Sales	None
Cost of Merchandise	None
Gross Profit	None
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Expenses which continue	7,000
Net Profit	$ 2,000

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through certification by the Board, upon petition of an interested party. This method is continued under the Taft-Hartley Act.

But under the Wagner Act petitions were recognized only if filed by a representative claiming to represent a majority of the employees in the bargaining unit, or by the employer *if* two or more representatives claimed the right to be bargaining agent. Two important changes are effected by the Taft-Hartley Act.

First, fullest freedom in exercising rights guaranteed by both the Wagner Act and the Taft-Hartley Act should include freedom *not* to be represented by a bargaining agent as well as freedom to select a bargaining agent. The Taft-Hartley Act recognizes this fact, and provides for petitions for decertification of an existing bargaining agent upon proper application by the individual employees in the bargaining unit (173 ALR 1409; § 12).

Second, if the alleged bargaining representative does not seek Board certification, an employer may petition therefor at any time *after* demand for recognition is made by the labor organization, regardless of whether one or more labor organizations seek such recognition (173 ALR 1412; § 13). Because of this provision employers may now seek Board determination of representation questions, and employers and individual employees need not depend upon the whim of any labor leader as to whether such questions shall be settled under orderly process of law or through the coercive processes of strike.

There is one other important, but perhaps less publicized, provision of the Taft-Hartley Act with respect to representation proceedings. It is that provision which guarantees to independent unions the same treatment as that afforded to unions affiliated with the A.F.L. or the C.I.O. (173 ALR 1409–1410; § 12). Again the purpose is to guarantee the fullest freedom of choice to employees in the selection of their bargaining representative.

The question of so-called noncommunist affidavits and financial reports, the filing of which are required before a union can avail itself of procedures before the Board, is important in connection with both representation proceedings and unfair labor practices. It will be discussed in the third of this series of articles.

III. Representation Elections

Under the Wagner Act the Board could certify a bargaining representative, after a proper petition was filed, either after an election, or with the consent of the union and employer without an election and as a result of card check or recognition agreement. In order to insure that each employee is guaran-

teed the right to indicate his or her free choice, without coercion or restraint, Congress has provided in the Taft-Hartley Act that certification can be based only upon an election by secret ballot.

Employees in the bargaining unit are entitled to vote at such elections. It is provided in the Taft-Hartley Act, however, that striking employees are not eligible to vote unless entitled to reinstatement. The purpose of this provision is to prevent employees who will no longer be in the bargaining unit from having a voice in determining the representative selected by the unit. The attempt to insure that the bargaining representative is the true choice of those to be represented is not subject to criticism; but the failure to specify the situations in which a striking employee is or is not entitled to reinstatement may raise problems (173 ALR 1413; § 15).

So that employees and employers will not be harassed by frequent representation proceedings, it is provided in the Taft-Hartley Act that no election shall be conducted in any bargaining unit more often than once in a twelve month period. This is a minimum limitation, and the period presumably may be lengthened by the existence of a collective bargaining agreement (173 ALR 1414; § 18).

These are the principal changes effected in representation proceedings by the Taft-Hartley Act. Other changes therein, such as provisions governing run-off elections, certification of results, the right of an individual to present his own grievances, etc., are discussed in detail in 173 ALR 1405–1415; §§ 5–18. All of the changes in representation procedures resulting from the Taft-Hartley Act have as their purpose the protection of individual rights. As heretofore stated, some clarifying amendments may be required, but the basic principles are beneficial to labor, to management, and to the public, and if the provisions governing representation proceedings are utilized to their fullest extent, in good faith, by labor and management, they should assist and not obstruct efforts toward industrial peace.

(*Continued in September–October Case and Comment*)

Lawyers must be superior to other men, for they are generally seen at their best when going through the greatest trials of their lives.

"And do as adversaries do in law,—
Strive mightily, but eat and drink as friends."

—*Shakespeare*

The Lawyer's Secretary Speaks

By LUCILLE CUMMINGS ▶ Speech before Fresno County, California, Bar Association, December, 1947

THERE are numerous things that secretaries like about their bosses. Does that surprise you? When we discussed the matter, one of the girls said that she could fill volumes with what she liked about her boss, and when we say that there are many things we like about our bosses, we hope that the feeling is mutual.

One of the things that secretaries like about their bosses is their ability to "bounce back" under even the most crushing defeats.

Another thing that secretaries like about the boss is that when she goes to the office she does not assume the same category as that of the desk or filing cabinet. She does have to have some of the former's finer qualities, such as being able to bring forth a file or supply papers which have mysteriously disappeared and like the law books in the library she does have to have a certain amount of information which she must impart. However, the boss is considerate of the secretary and treats her as an individual. She likes to feel that the boss appreciates her help and co-operation and that he gives her a certain amount of responsibility with which to go ahead and do the more routine things in the office, which will lighten his burden and leave his time free for the detail which he alone can do. The trust he places in her is not only flattering, but it also inspires in her the desire to do her best to make the boss's business a successful operation.

Another thing that the secretary likes about the boss is the fact that he knows that after she has worked to prepare the papers for a case that she will be glad to know of the outcome of the case. It is important to her to share in the result, be it the winning side or the losing one, and she appreciates being considered an important enough member of the team to be informed as to what happened to that team.

One secretary said that one of the things she liked about her boss was the fact that he had a nation-wide reputation for practicing law with his shoes off—and any reference to persons either absent or present is purely accidental.

You know there was one thing that there was general agreement about when we discussed the things we liked about bosses. I shall put this in early, and say

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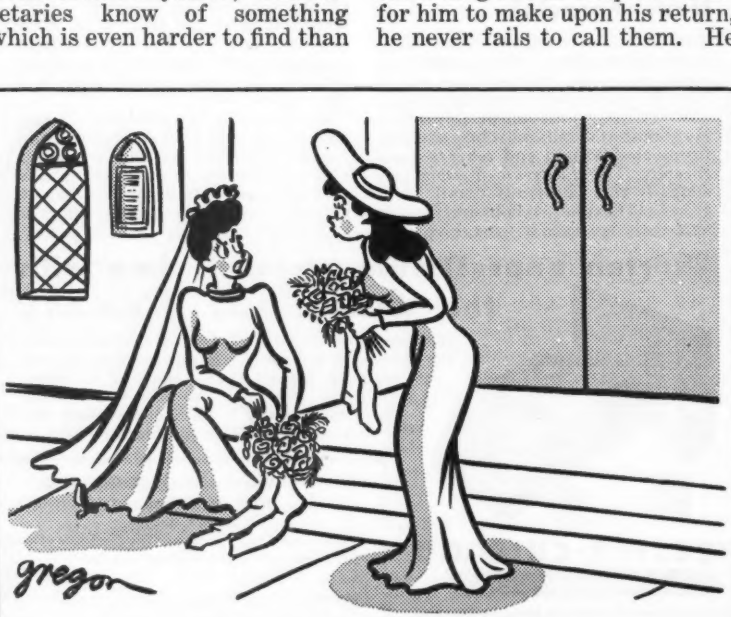
that all the girls liked the idea of having all day Saturday off in the Summer. You should have heard all the things they accomplished on those Saturdays,—washing, cleaning, shopping, hair dressing and on and on. Can you guess what is coming next? You can. Well, all I can say is that there were some very envious glances cast when some of the girls remarked that they did that all year.

You all have heard that old saying about "It's like finding a needle in a haystack," and secretaries know of something which is even harder to find than a needle in a haystack—and that is the boss, that is some bosses. One of the finest qualities the secretary finds in her boss is that one which inspires him to say that he is going out and will be back in a certain length of time. If he goes out, he tells when he will be back and if he does not return, he calls to check with his secretary and inform her when he will be back. Another fine quality is his thoughtfulness. When he has been out of the office and the memo pad has a long list of telephone calls for him to make upon his return, he never fails to call them. He



"Do you know a good lawyer?"

appreciates the fact that not only does it show that the office is run efficiently, but that he is interested in the calls and wants to return them.

Generally, we like the boss because he is a combination of the fine qualities of thoughtfulness, co-operation, kindness, generosity, helpfulness, and because he realizes that his profits and our wages rise and fall together, and that efficiency brings about his success as well as ours.

So in closing I should like to say:

That in answer to the complaint of the Fresno County Bar Association, the Legal Secretaries admit, deny and allege as follows:

I

That they like the boss because they are in possession of such knowledge as to know many of the fine qualities of the boss.

II

. . . . . .

Defendants admit that the boss is considerate, kind and helpful in doing everything possible to aid his secretary to have a smooth running, efficient system with which to assist him in the operation of his practice.

III

Defendants allege that they like their boss for all the reasons hereinabove stated and admit that they prefer working as secretaries to said bosses because of the interesting work and because of their desire to live up to the high standards which said bosses have set up.

IV

THEREFORE, said Legal Secretaries pray that there be no offense taken and that said secretaries shall not go free, but shall remain with said bosses from now until attorneys are no longer a necessity.

And wish them to know:
That We like our boss for his fairness and understanding;
We enjoy his pranks and grandstanding;
We appreciate his reserve at an unexpected loss;
But most of all we like him because he is the boss.

Which Steps?

A client of mine received a so-called notice presumably terminating tenancy which reads as follows:
"Mr. Rollins: Notice 30 days from 5 August to 5 September You must be out of the house or steps will be taken."

J. M.

Query: Which steps? The front or the back!

Contributor: George Gelder
Oakland, California.

What Lawyers Think of Their Secretaries

By SAMUEL F. HOLLINS *of the Fresno (California) Bar*

Speech before Fresno County Legal Secretaries Association, March 15, 1948

WHEN your president came to work for me about three years ago I was very much behind in my work and I dictated to her and stopped and asked, "Am I too fast for you?" Your president considered and then she looked up at me and said, "Oh, no, indeed—but you are much, much too old."

Now, seriously, the Century Dictionary defines "secretary" and says derived from the Latin secretarius, literally translated meaning "confidential officer, as one intrusted with secret or private matters; also, a person who conducts correspondence, keeps records, etc., for an individual."

My definition of a good legal secretary is a girl who does everything in my office, top to bottom, starting from uncorking a bottle, to buying Valentines and birthday cards for my wife. I judge everybody else by myself. That's human nature and I always want a secretary that knows more than I do. I want a secretary that is smarter than I am. I want a secretary that has got all the answers, all the tact, all the diplomacy, all the loyalty, and everything else. All lawyers want that. I need a secretary that I can hand a will to and she handles the entire probate estate down to and including depositing the check for my fees in the bank. Now, I could talk for hours on this phase of it.

Many lawyers expect the secretary to tell him what to do; tell him about all his dates and appointments and papers he must have ready. On the other hand, some attorneys don't want the secretary to stick her nose in every piece of business—and at the same time they expect the secretary to keep him from going asleep on matters.

The law itself is a selfish mistress and must be wooed by a sustained and lonely passion. But the jealous mistress of the law alone is not enough for me. I need the intelligent, eager, stimulating presence of an attractive young girl and no formality. If she is more comfortable taking dictation in her stocking feet that is all right with me (several of my secretaries have had exceptionally pretty feet). If she enjoys smoking—let her smoke; if she craves a cup of tea, breath of fresh air, time out to phone her boy friend for a hamburger—

let her take time off, until her girlish cravings have been satisfied.

It takes me quite a while to find out just what makes a secretary tick, and it takes maybe several months before the secretary is completely relaxed with me.

Well, to relieve suspense I have never required any secretary to sit on my lap.

I have been told by a great many people that I am not sufficiently dignified with secretaries for a lawyer. I have never been able to figure that one out. Maybe I have been lucky. But if friendliness and affection for a girl who works for you constitutes spoiling her, then in my case it has paid handsomely.

Adeline (to get down to cases) is 24 and looks about 16. She thinks she has no idiosyncrasies; but she is the only girl I have ever seen in my life with similar hair that never uses a bobby pin.

She likes to look sophisticated and dresses accordingly. She is really just about as sophisticated as a Riosa Gem peach. But I haven't had the nerve or courage to offer any suggestions about her dress. As a matter of fact, she has remarkable judgment and remarkable taste.

She is one of the nicest secretaries I have ever had; but she will probably get married some day and trade her typewriter for a kitchen stove. Naturally, I will be sunk without her; but maybe with the help of your employment chairman I will recover. I have got a couple of daughters and I will probably lose them by the same route. I hate to think of it; but it is obviously in the cards.

There is a popular idea that there is always suspicion and distrust between a man's wife and his secretary. According to this myth—if the boss buys his wife a mink coat, the secretary gripes, and if he buys his secretary a box of candy—the wife burns. This is all baloney. My wife and my secretary get along fine. My daughters equally are devoted to my secretary because they find her a sterling ally to break down father's opposition to doling out more money for more clothes.

I still receive a lot of Christmas cards and many pleasant visits and letters from secretaries who have divorced me for real husbands or more pay. By implication I have always wanted my secretary to understand that she is to be critical besides a secretary. She is a sounding board to determine whether my actions are good or bad. Of course, my secretary is essentially human and after all, if my approach doesn't get by with her, it will probably rub the client or the judge the wrong way.

Secretaries are developed—not born.

The two factors that are most important in the development of a perfect secretary are a teach-

able employee and a helpful employer.

I have always experienced handicap in training a bird dog, and have said that of course I was handicapped because I didn't know more than the dog did to begin with.

So, likewise, I haven't been too helpful an employer, because I didn't know as much as the girl did. The teachable secretary can take great joy in doing work increasingly well; but a secretary is entitled to and should have some assistance from her superior. After all, if the employer does not know how to help his secretary and I must say many of us have not had a sufficient and clear understanding of secretarial training to give clear instructions, and therefore, we have no right to expect to receive superior service, and we of course don't get superior service. Of course, the law business is of a confidential nature of the secretarial work and it is sometimes difficult to secure advice from outside sources. Perhaps the best secretaries and the ones who hold the most valuable positions are those girls who lean less heavily upon their bosses for directions; but the fact remains that after all, if a secretary follows instructions it is the best protection that a secretary has against difficulties. The clever secretary is one who will know how to ascertain precisely what her boss wishes without subjecting him to any unnecessary amount of interrogation.

Because of the somewhat glamour of the legal profession, many secretaries start in their work expecting to find their employers supermen, who will always do everything the right way. If we bosses realized the greatness with which sometimes our profession seems to have enclosed us we would probably be afraid to even meet our secretaries, knowing how impossible it is for us to live up to the expectations of beginners.

But I want you girls to realize, instead of being convinced that you have been cheated in the employer you have found, try to understand that he is a human being, who being human quite frequently makes serious mistakes in the way he endeavors to get you to do your best work.

Don't let your disillusionment as to your employer's infallibility cause you to lower your secretarial standards accordingly.

The real accomplishment is to find co-ordination which will make you understanding and understood. Of course, nobody is understood by anybody else. To live is to be misunderstood.

The attitude of legal secretaries toward fellow legal secretaries is of much importance. A great deal of the success of any secretary depends upon the respect and co-operation to other employees in the office. Most people admire the capable employee who is willing to assume

her share of the work without asking too much assistance from her associates; always greet your fellow workers cheerfully, cordially and naturally; but remember that few people care to be burdened with your own troubles.

Lawyers are a funny lot. My observation is they don't like new changes or innovations. Sometimes secretaries in honest effort to improve will clean up the desk and rearrange the furniture; but the lawyer is still a man and he resents many of these changes just as much as he resents his wife moving his bed from one location to another.

Not having the ability or the intelligence of the representative of your organization that addressed the Bar Association last fall, and not being able to write my own poetry, I will have to use someone else's and I therefore propose this toast, this long-merited toast, to legal secretaries, without changes:

I used to toast the royal queens
And queens of beauty rare;
I drained my glass to lovely lass
And to her eyes and hair;
But in these day of sober drinks
There's one whose health to me
Means vastly more than beauty or
The blood of royalty.

Here's to my Secretary!
Long faithful to her duty.
She'd win no prize for vampish eyes;
Her freckles mar her beauty.
Here's to her! Her specs! Her brain!
I pledge her health in water!
Cool, sober, staid, a precious maid;
I love her—like a daughter!

She keeps my creditors at bay,
Admitting only debtors;
Collects the rent when she is sent,
Or writes dry business letters;
She always puts her fingers on
The paper I require;
Sums I can't add she's always glad
To do, and doesn't tire.

Here's to her bonny, busy hands!
They never are erratic.
I hope that they will type away
For years, nor grow rheumatic!
Here's to her modest salary!
(I'd blush if I should tell it!)
But for her grit I'd have to quit
My business—couldn't sell it.

"Excuse the liberty I take," as the convict remarked when he escaped from the state prison.

God grants liberty only to those who love it, and are always ready to guard and defend it.

—*Daniel Webster*

Reprinted from Justice Court Topics, February, 1948

THE DILEMMA OF MISS BERTHA JANE

By LOUIS E. BOUTWELL
Justice of the Peace, Scottsville, N. Y.

DECORATION DAY in the year 1933 fell on a Tuesday and the school of Forestville closed for Monday, giving the pupils and teachers a long week-end. Miss Bertha Jane, who was one of the teachers, took advantage of the opportunity to come to Rochester in her little Ford runabout to visit friends.

About four o'clock on Monday afternoon, Bertha passed through Scottsville on her return journey and drove out along the Caledonia Road. She was thinking, I fear, of something not connected with the perils of motoring, especially in holiday seasons. At any rate, without referring to her rear-view mirror, she swung out to pass a car, clogged the road, and put a following motorcycle into the ditch. As her luck would have it, the motorcycle was ridden by a member of the State Police. Ten minutes later, Bertha was in my office charged with reckless driving, which, on a holiday or any other day, is a serious offense. The Trooper was undamaged but purposeful.

The years had not dealt kindly with Bertha Jane. She had grown old, but not gracefully. I remember her as dowdy, pudgy, and unkempt, and at the moment, as incoherent with fright and with anxiety as to the outcome of the predicament in which she found herself. She said she must lead her grade in the Decoration Day parade, mixing that worry with vague ideas of being put in jail. She kept saying, "What shall I do? O, what shall I do?" with the tears following each other down her cheeks. The Trooper and I went ahead with the preliminaries, pretending to be unconcerned. My forecast was that Bertha would plead guilty and that I would lay a mild fine, suspended because she was contrite and because I had an idea what Forestville was paying their grade teachers.

In those days I had been in office long enough to be reasonably familiar with the ritual of arraignment and to be imbued with the dignity and solemnity that is involved in performing an act so serious. But I had not been in office long enough to know how to go easy when the ritual bogged down. It takes time and experience and willingness to know when to mix patience and forbearance with formality. I did not mean to be harsh when I told Bertha Jane that she was charged with etc.

in that she had wilfully and unlawfully done so and so, but I suppose I was. When I told her that she was entitled to obtain the advice of an attorney, I suppose I implied that she was by way of needing it. I should have known, having been myself a school teacher for some forty years, that Bertha Jane, in these last days of the school year, had already had about all she could stand, without breaking. At any rate I did not get the guilty plea that I had counted on. What I did get was a renewed flood of tears, verging on the hysterical, and the outpourings of a soul, fraught with bewilderment and agony.

All these years, she told us, she had tried to teach obedience to law and to set an example for her children. Now, how could she ever face them again and ask them to be good? They would laugh at her. Their parents would think that she was no longer fit to be a teacher. And she wouldn't be. How could she say she was guilty when she never meant to do it? And how could she say she wasn't when she had done it? More tears and sobbing. Over and over again. No plea. No progress.

The Trooper, looking over her shoulder, shook his head, registering despair. Putting her on trial in her state of mind was out of the question. So I warned her that I would have to enter a plea of not guilty and hold her on bail for a subsequent appearance. She did not ask me how much the bail would be. She said, "But I did do it. How can you say that I didn't?" I explained that a not guilty plea was merely a legal device designed to give a defendant time to think things over calmly, to consult friends or an attorney and to prepare a defense. She asked if the trial would be in Forestville. I told her no, she would have to come back to Scottsville. She said how could she come all the way back to Scottsville, what with all the examinations and promotions coming on? And what was the use, anyhow, she would be guilty all the same?

When judicial gravity and decorum overshoot the mark and when subtle suggestion goes by with the wind, it is my opinion that a justice of the peace may as well lay aside his magisterial robes and tuck up his sleeves. I leaned across the desk and fixed the befuddled school teacher with my glittering eye. "Bertha Jane", says I, "Listen."

I then proceeded to do what I had never done before and have done only a few times since, always with a reluctance that surprises me. I gave her minute instructions in the technique of forfeiting bail with emphasis on the advantages thereof.

In conclusion I confided to Bertha that I had overstepped the ethical bounds of my office and that she must protect me from the consequences. If she repeated in Forestville what had happened in Scottsville, it might get to the ears of the Forestville justices of the peace and redound to my discredit. Would she promise never to betray my confidence? She would and did. That is why, in all probabilities, the good character of Bertha Jane remained, so far as I know, forever without blemish.

Correction, Please! by FRANKLIN WALDHEIM

THE AUTHORSHIP of the poem "Help Wanted" which appeared on page 64 of the March-April, 1948 Case and Comment, has been discovered. We quote from a letter of Attorney Franklin Waldheim of 1270 Sixth Avenue, New York 20, N. Y.

"I always enjoy reading your interesting magazine—and today I received the issue of March-April, 1948. My eyes popped when I reached the page inside the back cover. For it bore the poem 'Help Wanted,' sent by one of your contributors and stated to be anonymous. I wrote it.

"It was written in 1921 and was then published over my name in the 'Docket.' In 1935 it invaded the staid columns of the New York Law Journal where it appeared as an 'anonymous' poem. When I claimed authorship, the poem was quoted and the incident related in the Law Journal and several of the New York newspapers. The poem was subsequently included in a volume, published by Garden City Publishing Co. and edited by Hazel Felleman, entitled 'Best Loved Poems of the American People.'

"Your contributor apparently discovered the poem in another publication which had printed it without authorship credit. I am, as people go, a reasonably modest fellow—but I do not like to be enveloped by the mantle of anonymity. The poem is, I know, a trifling bit of writing but it is my brain-child. It pains me to see that child stigmatized as fatherless.

"Unhappy the author must be
Who's honored anonymously—
And I find that this view
Seems especially true
When it happens the fellow is
me!"

Soviet Communism Today

By JUDGE WILLIAM L. RANSOM

Editor-in-Chief, American Bar Association Journal

Condensed from American Bar Association Journal, March, 1948

"LAW in Bulgaria will hence-forth be practiced on a collective basis," was the announcement in *Free Bulgaria*. "This is the salient reform introduced in Bulgarian legal life by the new Law on Attorneys-at-Law, published in No. 257 of the November 5, 1947 issue of the *State Gazette*." The statement continues:

The new law exhaustively regulates the conditions under which one shall be able to practice the legal profession. Following, on the whole, the pattern of the old law, it contains stipulations regarding the way in which one can become a lawyer, obligatory legal apprenticeship, the organization of the members of the Bar, lawyers' collectives, work, duties and rights, their disciplinary and penal responsibility. Reforms have been introduced in all these phases of legal life, but the radical change is contained in Articles 30–38 of the law, regulating lawyers' collectives.

These articles stipulate that a lawyer cannot exercise his profession if he is not a member of a lawyers' collective, except in places where the number of practicing lawyers is less than 6. Lawyers' collectives shall be freely formed. The number of lawyers forming a collective cannot be less than 3 at inhabited places with a total of less than 10 practicing lawyers; less than 5—at places with up to 50 lawyers, and less than 10 where the total number of lawyers is more than 50. In Sofia the minimum of lawyers that will go to make a collective will be 15.

The collective shall be a juridical person, which must be approved by the Lawyers' Council (Bar Association) and registered with the latter. The collective, however, shall not be subject to taxation; its members shall pay their taxes individually in accordance with their respective income.

The Lawyers' Council may assign new members to a collective, or transfer lawyers from one collective to another when it finds important reasons therefore. The decision of the Lawyers' Council is subject to appeal before a committee composed of the President and Public Prosecutor of the Regional Court and two representatives of the Lawyers' Council elected by the latter.

The collective shall be represented by its secretary or his deputy who shall both be elected for one judicial year by the general meeting of the collective which shall notify their names to the Lawyers' Council.

The Collective Deals with Clients and Collects All Fees

The individual lawyer is left with no contact with clients; the secretary of the collective handles all that. All fees for legal services are paid to the collective. The statement says:

Only the secretary or his deputy shall contract with the clients. They shall endeavor to obtain an even distribution of the work among the members of the collective, taking into account their respective qualifications. When a client expressly points out a lawyer whom he wants to entrust with his work, he shall pay an additional remuneration in favor of the collective, determined under a separate table. The same rule applies to legal adviserships.

All remunerations shall be paid to the collective's treasury. Every lawyer shall receive the sums which shall thus have been paid for the work done by him, after deducting a certain amount to meet the common needs of the collective and another 20% to be distributed among all members of the collective. By unanimous decision of all members, the distribution of sums from the collective's treasury can be effected in a different manner; such a decision can be amended by a vote of ¾ of the total number of members.

The collective's general meeting shall vote its internal rules and regulations, which will be approved by the Lawyers' Council. It shall take decisions on all questions regarding the collective's activity. It shall be called together by the Secretary on the latter's own initiative or at the request of at least ¼ of the members. The general meeting, by argumented decision of the majority, shall admit new members to the collective. In case of refusal, the interested parties shall be able to appeal the decision before the Lawyers' Council within a period of two weeks. The Council's decision is final. The general meeting can, by decision of ¾ of all members, expel members from the collective when they do not carry out conscientiously the work with which they have been charged, or disturb the life of the collective. The decisions of the general meeting can be appealed against before the Lawyers' Council which has the final say.

Rigid Control as to Who May Be Lawyers

Many classes of persons are proscribed from being members of the Bar at all, even in a collective. Plenary control is kept by government; names may be stricken from the list. The statement continues:

Other important changes introduced by the new law pertain to the qualifications entitling a person to exercise the lawyer's profession. The list of reasons which disqualify a person from being a lawyer has been amplified. Thus, in addition to those cases in which a person was heretofore disqualified from exercising the profession of a lawyer, the following have been added: persons condemned for murder, under the Law on the People's Court, under the Law of the Defence of the People's Government, the Law on Supplies and Prices, as well as persons convicted to strict imprisonment, though they may have been exempted from punishment through pardon, a conditional sentence, rehabilitation or prescription; persons who beside their lawyer's profession exercise personally or through third persons another profession which is their chief occupation, or which is incompatible with the profession of a lawyer; persons who have a bad reputation or a disgraceful name at the courts, in the lawyers college or in society, and persons manifesting fascist tendencies.

The law further stipulates that all persons who have acquired the right to practice the legal profession under the laws existing heretofore, except those sentenced under the various laws enumerated in the preceding paragraph, shall retain their rights.

After the publication of the law, a Commission consisting of: the President and the Public Prosecutor of the Regional Court in the central city of the region, or their deputies, a member of the same court, two lawyers

delegated by the Lawyers' Council, a member of the Regional FF Committee and a representative of the respective County FF Committee shall make a pronouncement as to which lawyers registered with the Lawyers' Council before the publication of the new law possess the required qualifications and shall order all those who do not possess them to be struck out from the list of lawyers.

A lawyer whose name has been deleted from the list of lawyers, can ask for new inscription after the expiration of a period of three years.

The stipulations regarding lawyers' collectives shall come into force three months after the publication in the *State Gazette* of the order by which the Minister of Justice shall put them into effect.

Within a period of one month after the publication of the order, those lawyers who have agreed to form a collective must file a collective petition to the Lawyers' Council for the confirmation and registration of the collective. During the same term lawyers who have failed to join a collective must file petitions to that effect.

Every lawyer must present to the secretary of the collective a list of all contracts which he has concluded with his clients, indicating what sums are still due under them. These contracts remain effective, but all sums due under them shall be paid to the treasury of the collective.

For those who would read the most authoritative statement for American Communists as to what *they say* their program and objectives are as to this country, the New York *Herald-Tribune* recently published a twelve-column statement by William Z. Foster, leader of the Communist Party. Foster stated that American Communists "uphold" the Constitution of the United States, but that "under present political conditions in this country the United States Constitution requires many vital democratic amendments, including . . . the abolition of the present conservative and paralyzing system of government checks and balances, etc."

America appears to be momentarily at the crossroads as to what to do to combat Communists and Communism without sacrificing essential American principles. Doubt and concern are expressed by many as to how far legislation should go. There seems to be agreement on "exposure" and "publicity" as weapons, and on *public understanding* of what Communism means and would do to our country. At this stage of the discussion, a prime duty and opportunity of lawyers everywhere appears to be to "think on these things" and so to inform themselves that they can do their part in reasoned and demonstrative arguments against the totalitarian menace.

Among the New Decisions

Attorneys — *comity of judgment of other state suspending from practice.* The Nevada Supreme Court in Copren v. State Bar, — Nev —, 173 ALR 284, 183 P2d 833, opinion by Judge Horsey, held that in determining whether a member of the state bar should be suspended from practice because of acts of misconduct in another state in which he was subjected to a disciplinary proceeding because of such acts, comity requires the recognition of the judgment of suspension from practice in such other state.

The annotation in 173 ALR 298 discusses "Extraterritorial effect of judgment disbarring or suspending attorney."

Automobile Insurance — *exclusion of "members of household."* The decision in Island v. Fireman's Fund Indemnity Co., 30 Cal2d 541, 173 ALR 896, 184 P2d 153, opinion by Judge Edmonds, is to the effect that a married man in military service, who at the time he entered service, some four months before the automobile accident in question, involving his car while it was being operated by his father, was living at the home of the father, is not "a member of the household" of his father within the meaning of a clause of an automobile liability insurance issued to the father excluding coverage of any automobile owned by a member of the household of the insured.

The title to the annotation in 173 ALR 901 is "Automobile insurance: construction and effect of provision excluding coverage of other automobile owned, hired, or regularly used by insured or member of his household."

Automobiles — *pleading gross negligence and ordinary negligence.* The Oregon Supreme Court in Smith v. Williams, — Or —, 173 ALR 1220, 178 P2d 710, opinion by Justice Winslow, held that in an action by a passenger against a driver to recover for injuries sustained in an automobile accident in which the

complaint purports to assert two causes of action growing out of the same facts, the first seeking to recover on the ground of gross negligence and the second on the ground of ordinary negligence, it is error for the court to sustain a motion to require the plaintiff to elect as to whether he will proceed on the theory of gross negligence or on the theory of ordinary negligence, as the two theories are not inconsistent and do not actually present two causes of action but only one stated in different forms.

The annotation in 173 ALR 1231 discusses "Propriety and effect of pleading different degrees of negligence or wrongdoing in complaint seeking recovery for one injury."

Contracts — *waiver of warranty by acceptance of purchase price.* The Michigan Court in Hersey Gravel Co. v. State, 305 Mich 333, 173 ALR 302, 9 NW2d 567, opinion by Justice Bushnell, held that a highway contractor's acceptance of a payment of the contract price does not constitute a waiver of a claim for an alleged breach of implied warranty as to the character of the subsoil created by notations on the blueprints.

The annotation in 173 ALR 308 discusses "Acceptance by building or construction contractor of payments under his contract as a waiver of right of action upon implied warranty as to conditions affecting cost."

Corporations — *director's liability for labor policy.* The personal liability of a corporate director was upheld under an interesting set of facts in Abrams v. Allen, 297 NY 52, 604, 173 ALR 671, 74 NE2d 305, 75 NE2d 274, opinion by Judge Desmond. It was there held that directors of a corporation violate their duty where they have caused a plant to be dismantled and removed, and production curtailed, thereby causing loss to the corporation, not for any legitimate business reason, but solely for the purpose of discouraging, intimidating, and punishing its employees by removing their hopes of re-employment by the corporation, and where they permit one of their number to vent his personal bias, animus, and hatred in evolving and executing the corporation's labor policy.

The annotation in 173 ALR 674 discusses "Lockout or removal of place of employment to avoid labor difficulties or punish employees as actionable wrong."

Criminal Law — *irresistible impulse as excuse for crime.* The irresistible impulse doctrine was denied in State v. Maish, — Wash2d —, 173 ALR 382, 185 P 2d 486, opinion by Judge Jeffers. It was there held that irresistible impulse to do an act which the actor knows to be wrong, whether or not induced by or growing out of mental disease, is not such insanity as will relieve the doer of the act from criminal responsibility.

The annotation in 173 ALR 391 supplements an earlier one on the question "Irresistible impulse as excuse for crime."

Estates — *effect of creation of entirety by partition deed.* Title lawyers will be interested in the decision in Holt v. Holt, — Tenn —, 173 ALR 1210, 202 SW2d 650, opinion by Judge Gailor. It was there held that an attempt in a partition deed to create an estate by the entirety is subject to the general rule that such a deed passes no title and creates no new estate, and an estate by the entirety is not created by a deed in partition which, by direction of a coparcener, is made to himself and wife.

The title to the annotation in 173 ALR 1216 is "Character of conveyance or conveyances necessary to create an estate by entirety."

Evidence — *instructions in res ipsa loquitur case.* The Mississippi Court in Block v. Brown, — Miss —, 173 ALR 874, 29 So 2d 665, opinion by Judge Alexander, held that in an action for damages caused by the collapse of a building due to alleged faulty and negligent construction and maintenance, where the plaintiff relies upon the res ipsa loquitur doctrine and the defendant, in addition to denying negligence, asserts an affirmative defense upon the theory of a precedent explosion, the jury should be correctly apprised of the nature and extent of the burdens respectively placed upon the plaintiff and the defendant.

The subject of the annotation in 173 ALR 880 is "Right of plaintiff in res ipsa loquitur case to an instruction respecting inference by jury."

Executors — *time for computation of commissions.* The Oregon Court in Re Feehely, — Or —, 173 ALR 1334, 187 P2d 156, opinion by Acting Chief Justice Lusk, held that accretions to a decedent's estate by way of rent, interest, and the like collected by the executor and for which, under the provisions of the statute making the executor chargeable in his accounts with the value of the estate at the time of settlement, he is compelled to account at the time of the settlement, are to be added to the appraised value of the estate in computing the amount of the representative's commissions under a statute providing that he is to have a commission "upon the whole estate accounted for by him," such provision being in pari materia with the provisions for accounting.

The practical question "Appraised value of estate as shown by inventory or value at time of settlement as basis for determining commissions of executor or administrator" is discussed in the annotation in 173 ALR 1346.

Federal Employers' Liability Act — *effect on state laws.* The South Carolina Court in Boyle-

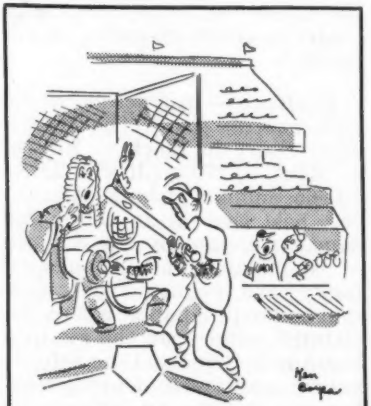
ston v. Southern Railway Co., — SC —, 173 ALR 788, 44 SE2d 537, opinion by Judge Fishburne, held that while the Federal Employers' Liability Act, by virtue of the 1939 amendment, covers employees injured in acts contributing to both intrastate and interstate commerce, it does not supersede state laws covering the subject so as to preclude an action by a railroad employee, employed to unload interstate as well as intrastate freight shipments, for negligence under the state law for injury sustained in unloading an intrastate shipment.

The annotation in 173 ALR 794 discusses "Federal Employers' Liability Act as amended in 1939 as excluding state law, where employee is injured in course of acts contributory to intrastate and interstate commerce."

Gambling Contracts — *conflict of laws in regard to.* Betting is a hazard even after winning. The Connecticut Court in Ciampittiello v. Campitello, 134 Conn 51, 173 ALR 691, 54 A2d 669, opinion by Judge Ells, held that a claim by one against the estate of another for a share of money won by them jointly in betting on horse races in another state in which such betting was legal, will not be recognized as valid in a forum the public policy of which against such betting is evidenced by statutes making betting on horse races a crime and declaring void all wagers and all contracts and securities where of the whole or any part of the consideration shall be money won, laid, or betted at any horse race.

See the annotation on the question "Law or policy of forum against wagering transactions as precluding enforcement of claim based on gambling transaction valid under governing law" in 173 ALR 695.

Husband and Wife — *limitation of actions for husband's loss for injury to wife.* The North Dakota Supreme Court in an opinion by Chief Justice Christianson held in Milde v. Leigh, — ND —, 173 ALR 738, 28 NW2d 530, that the statute of limitations begins to run against a



"Nobody argues with the new umpire."

husband's right of action for expenses and loss of consortium occasioned by a tortious injury to his wife, from the time when the loss of services actually occurs and the expenditure for medical treatment and care is required, rather than from the date of the tortious act.

See the annotation on this question in 173 ALR 750.

Income Taxes — *recovery of damages as income.* The U. S. Court of Appeals for the Sixth Circuit in Durkee v. Commissioner, 162 F2d 184, 173 ALR 553, opinion by Circuit Judge Miller, held that a sum received in settlement of an action seeking damages for injury to or destruction of the good will of the taxpayer's business by a combination in restraint of trade is capital and not taxable income, although the damage was computed through loss of income, where no claim for lost profits was made in the action and the allegations as to profits were only an evidential factor in determining actual loss and not an independent basis for recovery.

The circumstances under which damages may be taxable as income are discussed in the annotation in 173 ALR 558.

Insurance — *waiver of proof of disability.* The Texas Court in Sanders v. Ætna Life Insurance Co., — Tex —, 173 ALR 968, 205 SW2d 43, opinion by Judge Hickman, held that an insurance company issuing a group insurance policy providing for monthly payment of benefits for permanent and total disability for a period of fifty months, by rejecting an employee's claim for disability payments on the ground that he was not permanently and totally disabled within the meaning of the policy, waives a provision of the policy requiring proofs of continued and permanent disability to be submitted each twelve months, and, where it has not withdrawn that denial of liability, cannot defend the employee's action for the recovery of disability benefits on the ground that it should have been furnished with proof of continued and permanent disability.

An interesting discussion of the cases on this point appears in 173 ALR 973.

Laches — *necessity of pleading.* The Minnesota Court in Cantieny v. Boze, 209 Minn 407, 173 ALR 321, 296 NW 491, opinion by Judge Loring, held that it is not necessary for a defendant to plead laches in his answer in order to avail himself of objection to the plaintiff's delay when that delay becomes apparent at the hearing.

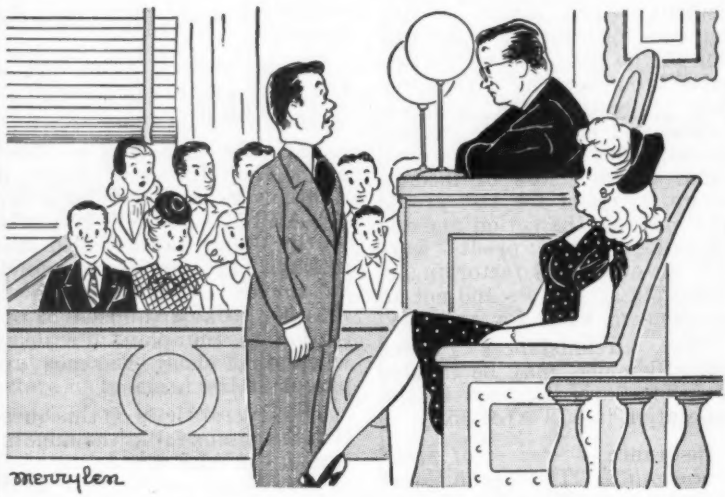
The several views on this question are discussed in the annotation in 173 ALR 326.

Leases — *dower in oil and gas lease interest.* In Van Camp v. Evans, — Ky —, 173 ALR 1256, 206 SW2d 38, opinion by Commissioner Clay, it was held that

the interest of a lessee under an oil and gas lease which, though for no definite period, is subject to forfeiture for failure to drill within a specified time, is not an estate in fee simple in which his widow may claim dower.

The cases on this question are discussed in the annotation in 173 ALR 1260.

Limitation of Actions — *effect of concealment.* An interesting application of the law of fiduciary relationship appears in the case of Stetson v. French, — Mass —, 173 ALR 569, 72 NE2d 410, opinion by Judge Qua. It was there held that the evidence supported a finding that when a successful business man who employed his illiterate brothers, after having promised them to deposit for their benefit in a bank wages withheld from them, continued to withhold such wages without depositing the same, and on occasions made statements to the brothers indicating that he was depositing the wages, he occupied a relation of trust and confidence to his



"Your honor, my client refuses to divulge her age, but she wishes to confess to shooting her husband . . ."

brothers, that he continued fraudulently to conceal from them the several causes of action as they arose against him, and that they were justified in relying upon him without making independent investigations of their own, so as to prevent the running of the statute of limitations against their claims against him.

The annotation in 173 ALR 576 discusses "What constitutes concealment which will prevent running of statute of limitations."

Mines and Minerals — *partition of interests in.* In Holland v. Shaffer, 162 Kan 474, 173 ALR 845, 178 P2d 235, opinion by Judge Wedell, it was held that the general rule that all property capable of being held in cotenancy is subject to judicial partition either in kind or by appraisal and sale obtains as to stone, coal, oil and gas and other minerals in place when carved out of the fee by conveyance.

See the annotation in 173 ALR 854 on the question "Partition of undivided interests in minerals in place."

Municipal Corporations — *definiteness of zoning ordinance.* An interesting constitutional question was decided in Chicago v. Reuter Bros. Iron Works, 398 Ill 202, 173 ALR 266, 75 NE2d 355, opinion by Judge Fulton. It was there held that a zoning ordinance which permits the fabrication of metals by means of practices which do not "emit noises of a disagreeable or annoying nature" is not void for indefiniteness, where the terms "disagreeable" and "annoying" have acquired an established meaning through the common law in the definition of a common-law nuisance.

The annotation in 173 ALR 271 discusses "Zoning laws prescribing conditions of business or manufacturing designed to avoid nuisance or annoyance."

Municipal Corporations — *liability for flooding.* The Minnesota Supreme Court in Roche v. Minneapolis, 223 Minn 359, 173 ALR 1020, 27 NW2d 295, opinion by Judge Magney, held that a city is not liable for damage to property resulting from water seeping into a basement from under the floor during a period when, because of extraordinary rainfall, the soil surrounding and underlying the property became saturated with water and the sewer constructed by the city was not adequate to carry off all the water, where the premises in question were a part of a large swamp and peat bog which was the natural depository of water from the surrounding area, the city did not cast upon such premises quantities of water not previously there, and the construction of the sewer had lowered the level of the water which formerly stood on the area and had made a part of the swamp usable for residential purposes.

The circumstances under which the municipality may be held liable in this class of cases are shown in the annotation in 173 ALR 1031.

Negligence — *personal liability of infant at play.* Liability was denied in Hoyt v. Rosenberg, 80 Cal App2d 500, 173 ALR 883, 182 P2d 234, opinion by Presiding Justice Barnard. It was there held that in deciding whether there has been a failure on the part of a child to use ordinary care to avoid injury to other children in playing a game, the test is not what an adult would have done or what the results indicate should have been done, but what an ordinary child in that situation would have done, and whether the defendant exercised the degree of care ordinarily used by children of the same age under similar circumstances.

The annotation in 173 ALR 890 discusses "Liability of infant for injuries inflicted at play."

Oil and Gas — *interest created by reservation of profits.* In Gulf Refining Co. v. Stanford, — Miss —, 173 ALR 1099, 30 So2d 516, opinion by Chief Justice Smith, it was held that a reservation in a deed, executed when it was not known whether there was any oil under the land conveyed, that "in the event of any minerals, oil or gas being found in the bounds of the land we are to share the profits equally" does not entitle the grantor to one half of the oil produced from the land by a lessee under a mineral lease from the grantee but indicates the intention of the parties to share in the gain from or use of the oil after it had been brought to the surface.

The annotation in 173 ALR 1104 discusses "Construction and effect of provision of deed for sharing of profits in event of discovery of minerals, oil, or gas."

Public Officers — *malicious prosecution and abuse of process.* Judicial immunity was denied in Hoppe v. Klapperich, — Minn —, 173 ALR 819, 28 NW 2d 780, opinion by Judge Matson. It was there held that a municipal judge vested with the powers of a justice of the peace in criminal matters, in issuing a warrant of arrest without first having a complaint reduced to writing and subscribed by the complainant as required by the statute investing magistrates with power and jurisdiction to issue warrants, acts wholly without his jurisdiction and in a nonjudicial capacity and can claim no immunity from liability in a civil suit for damages for abuse of process or malicious prosecution.

The annotation in 173 ALR 836 discusses "Civil liability of judicial officer for malicious prosecution or abuse of process."

Taxation — *application to income taxes of charter exemption*

in corporate charter. The rule of strict construction of tax exemptions is applied in Atlantic Coast Line R. Co. v. Phillips, 332 US 168, 91 L ed 1977, 173 ALR 1, 67 S Ct 1584, opinion by Justice Frankfurter. The decision holds that no unconstitutional impairment of the obligation of the contract created by a charter provision limiting the taxation of a railroad company to a stated percentage of net income is involved in the imposition by the state by whom the charter was granted, of a corporate net income tax, where such charter provision may permissibly be construed as an exemption from property taxation only.

The annotation in 173 ALR 15 discusses "Tax exemptions and the contract clause."

Tax Titles — *liability for rent of purchaser of invalid title.* The Oklahoma Court in Wilcox v. Westerheide, — Okla —, 173 ALR 1171, 185 P2d 452, opinion by Judge Osborn, held that upon cancelation of a tax deed and recovery of possession of land by the owner in an action brought for that purpose, on the ground that the tax sale was void, the defendant is liable to the owners for the reasonable rental value of the property during the time the defendant was in possession under the tax deed, as he was not rightfully in possession.

See the annotation in 173 ALR 1179 on the question "Rights and remedies of owner against holder of invalid tax title respecting rents and profits or use and occupation."

Tender — *withholding vendor's obligation in tendering purchase money.* Real estate lawyers will appreciate the effect of the decision in Lively v. Munday, 201 Ga 409, 193 ALR 1295, 40 SE2d 62, opinion by Chief Justice Bell. It was there held that the purchaser under a contract for the sale of land cannot, in making tender of the purchase money, deduct from the agreed purchase price the cost of the requisite amount of Federal revenue stamps for the deed of conveyance, although under the Federal statute the duty of seeing that the deed bears such stamps rests primarily upon the grantor.

The annotation in 173 ALR 1309 discusses "Right of purchaser in making tender to deduct from agreed purchase price amount of obligations which it is the vendor's duty to satisfy."

Timber Contract — *custom as to size of trees.* The Georgia Supreme Court in Dorsey v. Clements, — Ga —, 173 ALR 509, 44 SE2d 783, opinion by Judge Bell, held that a custom of business or trade relating to size of trees ordinarily used for turpentine purposes becomes by implication a part of a contract leasing all "timber suitable for turpentine purposes" on described lots of land and controls

as to the minimum size of trees that are to be used.

The annotation in 173 ALR 518 discusses "Extrinsic evidence regarding character and size of trees contemplated by written timber contract or lease."

Trustees — *notice of removal.* Constructive notice for removal of a trustee was upheld in Boone v. Wachovia Bank & Trust Co., — App DC —, 173 ALR 1285, 163 F2d 809, in an opinion by Justice Miller in the United States Court of Appeals for District of Columbia. It was there held that a proceeding for the removal of a nonresident trustee, brought in the court which had established the trust under a will probated therein, and which appointed the trustee and was engaged in the supervision of the administration of the trust at the time the trustee wrongfully removed trust assets to another jurisdiction where he established his domicil, is a proceeding quasi in rem so that notice by constructive service is sufficient to satisfy requirements of due process of law.

The annotation in 173 ALR 1294 discusses "Necessity and sufficiency of service on removal of nonresident trustee."

Trusts — *ownership as factor in constructive trust.* Under the Maine law as declared by Justice Tompkins in Sacre v. Sacre, — Me —, 173 ALR 1261, 55 A2d 592, it was held that one need not hold the legal title to property in order to be held accountable as a constructive trustee; it is enough that he has a bond for title.

The annotation in 173 ALR 1275 discusses "Constructive trust against one holding merely bond for deed or other executory contract and not legal title."

Uniform Veterans' Guardianship Act — *construction of.* In Re Park, 210 La 63, 173 ALR 1056, 26 So2d 289, opinion by Judge Hawthorne, it was held that the intent and purpose of the legislature in enacting the Uniform Veterans' Guardianship Act was to provide a practical, speedy, and economical procedure for the appointment of curators and the administering of estates of incompetent veterans and their dependents when such estates consist entirely of money received or to be received through the Veterans' Administration, of assets acquired therewith, or of revenues or profits from property wholly or partially acquired therewith.

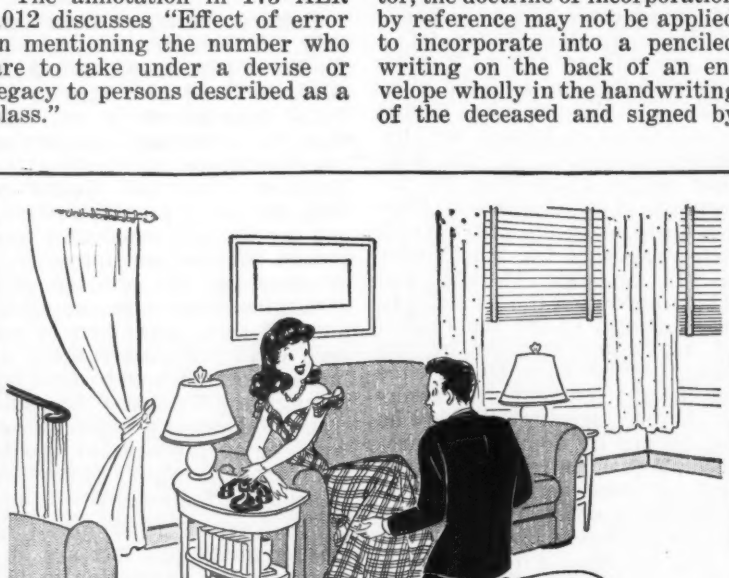
The various legal questions arising under this Act are discussed in the annotation in 173 ALR 1061.

Wills — *error in mention of number in class gift.* The effect of a common mistake in wills is determined in Walker v. Case, — Ark —, 173 ALR 1009, 205 SW 2d 543, opinion by Judge Millwee. In that case it was held

that a testamentary gift of $50 each to "my five grandchildren, who are children of my daughter, . . . deceased," constitutes a provision for all children of the deceased daughter as a class and all who fall within the class take under the bequest notwithstanding the testator misstated the number of the class.

The annotation in 173 ALR 1012 discusses "Effect of error in mentioning the number who are to take under a devise or legacy to persons described as a class."

Wills — *incorporation by reference in holographic will.* An interesting wills question was decided by the Kentucky Court in Scott v. Gastright, — Ky —, 173 ALR 565, 204 SW2d 367, opinion by Commissioner Clay. It was held that under a statute requiring a holographic will to be "wholly written" by the testator, the doctrine of incorporation by reference may not be applied to incorporate into a penciled writing on the back of an envelope wholly in the handwriting of the deceased and signed by



"Wait a minute . . . I'll call my lawyer and tell him I won't need his services, after all!"

her, executed just prior to going to the hospital where she died, stating that the will dictated to her attorney which she "did not sign is my last will and as I wish it," a typewritten instrument in the form of a will with the usual attestaton clause and blank spaces for the signatures of witnesses dictated by the decedent's attorney in her presence after he had received instructions from the decedent for the preparation of her will, but apparently never seen by her after it was typewritten by the attorney's stenographer and never executed by the decedent; and neither instrument nor both together may be probated as the decedent's will when the statute requires that a will not wholly written by the testator be attested by witnesses.

The authorities on this question are discussed in the annotation in 173 ALR 568 on "Incorporation of extrinsic writings in will by reference."

Wills — *provision for death of legatee at "approximately the same time."* The case of Re Searl, — Wash2d —, 173 ALR 1247, 186 P2d 913, opinion by Judge Beals, presents a very interesting construction of a will. It was there held that the death of a husband and wife may not be deemed to have taken place at "approximately the same time" within the meaning of reciprocal provisions in the wills of each whereby, after makng one another residuary legatees, it was provided that in case they should die "at the same time, or approximately the same time," the residuary estate should go to the wife's sister, where the husband dies forty-seven days after the death of the wife.

The annotation in 173 ALR 1254 discusses "Time interval contemplated by provision of will or of statute of descent and distribution with reference to death of two persons simultaneously or approximately at same time."

Wills — *withdrawal of probate.* The Vermont Court in Re Pynchon, — Vt —, 173 ALR 957, 55 A2d 519, opinion by Justice Buttles, held that the probate court in its discretion may permit the executor named in a purported will to discontinue his petition for the probate of the document and the withdrawal of the document from the files of the probate court for the purpose, indicated by the contestant's motion, of presenting it to the proper court of another jurisdiction where the testatrix died and the greater part of her property was located, the contestant's motion being supported by a stipulation of all the parties in interest appearing requesting that it be granted.

The circumstances under which probate or contest of wills may be withdrawn or dismissed are discussed in the annotation in 173 ALR 959.

The Letter

by
H. W. MEAD

HARRY MARTIN was in very low spirits as he walked to his bus stop, in fact he had been that way for some weeks. Ever since he had made those horrible mistakes. Normally of a cheerful disposition, he had found it more and more difficult to be his usual self, since that fateful day, almost six weeks ago. He hoped his friends and associates had not noticed, but he knew this was not possible. Only too often in the past few weeks Harry seemed to be preoccupied, in fact some would call it daydreaming. His friends of course, pretended not to notice his peculiar actions, but he realized they must have wondered at his strange conduct.

Entering the bus and pushing his way through the crowded vehicle, his thoughts continued. He knew it would be a terrible blow to Jane, when she found out the truth. Their whole married life had been a struggle, as they had married in the midst of the depression, and just when things had been looking up the war came along. That of course meant moving over the country constantly. After his discharge they had settled down again and he had been very fortunate in obtaining a position. By going to a night school he had been able to finish his education. The firm that employed Harry was a leader in its field, and he was being trained to fit into a responsible position. Of course, when they found out, this would all end. When it was all over maybe he could start again in something else.

He had thought of the mistakes he had made many times since that day, and because it is so easy after a mistake is made, he had thought many times of what he should have done. As the bus pulled up to his stop and he got off, he realized that this was only wishful thinking, and didn't help at all. Difficult as it was he knew he must try to be cheerful while he was around the house. No use in making Jane despondent until she actually heard the news.

Jane was in the back of the house when he came in, so Harry walked in the bedroom and took off his hat and coat. Slipping into his slippers and picking up a pipe he walked back to the kitchen where she was preparing the evening meal. Jane was looking through a cabinet, and seeing that the article she wanted was not there, announced she would go to the corner store to obtain it. She had seemed not to notice any change in Harry during the past few weeks, but then he knew she wouldn't show any outward expression. Harry walked to the front room to read

the paper as she went out the door.

Almost immediately Jane came back in the house, and Harry saw that she had some mail in her hand. She handed the mail to him and the first thing he saw was the letter. From the address he knew this was it, and his heart began to sink to his feet. He pulled Jane down on the davenport beside him because he knew that he must tell her now. She looked at him strangely and he told her she might as well know the bad news. Tearing the envelope open, he pulled out the folded letter, as Jane looked over his shoulder. They hadn't tried to soften the blow any because he could see it was a form letter. The first thing he saw was the number 71, and he knew the worst was true. But suddenly Jane threw her arms around him and screamed in joy. Astounded he read on and understood for the letter read:

Mr. Harry Martin:

This is to advise you that as No. 71 you passed the bar examination with a grade of 80, and that you are entitled to practice law in this state.

Very truly yours,

H. H. CLARK

Secretary, Board of Law Examiners

Everything was suddenly right with Harry, and he knew his position with the leading law firm was secure, and the long weeks of anxiety over the exam results were over.

Rebuttal!

In a certain mid-western court a man was suing the local traction company for injuries allegedly received in a street-car accident. The truth of the matter was that he had actually received his bruises when his auto collided with a telegraph-post. And this had happened a full mile from the street-car line.

The plaintiff's witnesses swore to the facts of the accident, and things were going very nicely for him, when one of their number was suddenly beset with an attack of conscience and during a recess repaired to the judge's chambers and confessed to the frame-up.

The judge rushed back into the courtroom with fire in his eye, determined to make an immediate public revelation of the perjurers. But he was brought up short in his resolution when the traction company's attorney suddenly produced three witnesses prepared to swear that the plaintiff was drunk when he boarded the street-car!

Wall St. Journal.

[*Condensed from Tennessee Law Review, April, 1948*]

How Some Famous Men Came to Be Lawyers

[*By* JOHN W. GREEN *of the Knoxville (Tenn.) Bar*]

THE REASONS that influence men to adopt the law as a profession are many and varying. Sometimes it is due to the impression made by hearing or reading a great speech; sometimes to parental suggestion or pressure; sometimes to a chance visit to a court house; sometimes to ability as a boy to declaim well at school; sometimes as a last resort after failing to make good in any other profession or calling.

Patrick Henry. Probably no man who ever gained distinction at the bar had a more inauspicious beginning than did Patrick Henry, who was born in Virginia, May 29, 1736. As a boy he was lazy, cared nothing for books, had no ambition, and spent most of his time hunting and fishing. All the education he received was a smattering of reading, writing, and arithmetic in a poor country school, supplemented by some instruction later from his father and uncle in arithmetic and the classics.

His father, who was born and educated in Scotland, set him up at the age of fifteen as a merchant in charge of a little country store, which at the end of a year was taken over by his creditors. Then with the aid of his father and father-in-law, he was established on a small farm. After two years this venture proved to be a failure. A little later, unmindful of his previous experience as a merchant, he took the remnants saved from his farming operations and invested in another country store which also in a little time went bankrupt.

At this juncture it so happened that Thomas Jefferson, passing through Hanover County on his way to enter William and Mary College, met and made the acquaintance of Henry. Jefferson has left this impression of him: "He had a little before broken up his store or rather it had broken him up, but his misfortunes were not to be traced either in his countenance or conduct. During the festivities of the season I met him in society every day and we became well acquainted. His manners had something of coarseness in them. His passion was music, dancing

and pleasantry. He excelled in the last and it attached every one to him."

His biographer, Moses Coit Tyler, is authority for the statement that Henry spent the next ten years of his life "groping in the dark, blundering from one misfortune to another. At the age of twenty-four having failed in every other pursuit, he turned for bread to the law, and there is no evidence that either he or any other mortal man was aware of the extraordinary gifts that lay within him for success in that career." But the fact remains that no matter from what source it came, he was inspired to believe that he could make a success of his life by speaking and that the law was the place to give it expression. Accordingly after studying law for one month he applied to a Board of Examiners, consisting of Chancellor Wythe, Edmund Pendleton, John Randolph and Peyton Randolph, all eminent lawyers, for a license to practice. When he appeared before the Board he looked so shabby and disreputable that some of the examiners were at first inclined to not even entertain his application. At last, however, they proceeded to question him and Pendleton and Wythe voted to reject him. The Randolphs were reluctant to pass him but finally yielded because, as John Randolph said to him, "You defend your opinions so well, if your industry be only half equal to your genius, I auger that you will do well and become an ornament and an honor to your profession." Pendleton relented and signed, and he was admitted to the bar.

During the next few years he was simply a small country lawyer unknown outside of his own bailiwick. But in 1763 there was a sudden turn in his fortunes. He was employed in what is known as the "Parson's Cause," in which he resisted the parson's claim and opposed the action of the King of England in assuming to set aside and nullify a law passed by the Virginia House of Burgessees. When it came his turn to speak, he startled the court and the jury by boldly denouncing the King as a tyrant and urging disobedience to his orders. Such utterances were treasonable, and if the colonists had failed to win the war that followed, Henry would probably have been hanged. But his words fell on sympathetic ears. He soared to heights of eloquence that electrified everybody within the sound of his voice. The jury, after deliberating only a few minutes, returned a verdict favorable to his client and the spectators evinced their approval by enthusiastic applause. At one bound Henry had leaped from obscurity into the limelight of fame.

From this time on he devoted his life to arousing the Colonists to fight for their freedom. His two speeches, one in the House of Burgessees at Williamsburg

and the other in St. John's Church at Richmond, made his name immortal. When the war was over he was mainly instrumental in procuring the adoption of the first ten amendments to the Constitution, known as the Bill of Rights. He then resumed his practice and made a fortune at the bar. Washington offered him the position of Secretary of State in his cabinet which he refused to accept, and he also offered to make him Chief Justice of the United States which he also refused. He was elected the first governor of Virginia and served three consecutive terms, and again in 1784, was called back for another term. He died at his home known as Red Hill in 1799, just six months before his great friend, George Washington, passed away at Mount Vernon. It was said of Henry when he died: "As long as our rivers flow or mountains stand, so long will his excellence and worth be the theme of homage and endearment."

John Marshall, the Great Chief Justice, read one of the first copies of Blackstone's *Commentaries* ever printed in America. His father bought the book and saw that his son read it. His father, Col. Thomas Marshall, at one time served as Sheriff of Fauquier County, Virginia, and several times as a member of the House of Burgessees. While occupying these positions he became associated with lawyers and lawmakers, felt that the bar offered the best social and financial opportunities for his son's advancement and decided to make a lawyer of him. John Marshall himself has left on record the statement, "From my infancy I was destined for the bar."

At the age of fourteen he received his first schooling at an institution which had been attended by George Washington and James Monroe—the latter in fact was one of his classmates. He was fond of reading, and prior to this experience had become familiar with such authors as Milton, Shakespeare, Pope, and Dryden. At the age of eighteen, he had read Blackstone and had begun to apply himself seriously to the study of law when the impending struggle with Great Britain diverted his attention. He laid aside his law books and joined a company of Volunteers engaged in training for military service. When the clash came he was ready.

He started in as a lieutenant, was promoted to a captaincy, and served with gallantry under Washington in the battles fought in New Jersey and in the terrible winter at Valley Forge. When the war ended Captain Marshall resumed his legal studies. His entire preparation for the bar, outside of reading Blackstone, consisted of about six weeks attendance on the lectures of the celebrated Chancellor Wythe at William and Mary College. Copies of the notes he took of these lectures show that he made

good use of his opportunites. He was admitted to the bar August 28, 1780. His license was signed by Thomas Jefferson then Governor of Virginia. Neither Marshall nor Jefferson at that time dreamed that the day would come when one, the outstanding advocate of State's rights, and the other, the outstanding exponent of a strong central government, would become bitter political and personal enemies. Captain Marshall began to practice law in Fauquier County and during this period served eight sessions in the Virginia Legislature. Later he moved to Henrico County and opened an office in Richmond which became his permanent home.

At first his progress at the bar was slow, and had it not been for his salary as a member of the legislature he would have had difficulty the first year in making ends meet. His practice however steadily increased, until by common consent, he come to be recognized as the best lawyer in the Commonwealth of Virginia.

"Just wait until the jury tests it out. I fixed it to hit the jackpot every time!"

His name first appears as attorney in the Reports of the Court of Appeals in 1786 where he represented George Washington and others in a case involving the title to their lands. It is said, that notwithstanding his extensive and successful practice, his income at the bar as a rule did not exceed $5000 a year. This seems ridiculously small for a man of his standing and ability, but it is perhaps not out of the way when it is remembered that his salary as Chief Justice was only $4,000 a year.

He was a member of the Virginia Convention, which met in 1788 for the purpose of considering the proposed Constitution of the United States, and was among those who favored its ratification. President Adams appointed him Chief Justice January 31, 1801. Long before this, while still serving in the Continental Army, he had reached the conclusion that if the Colonists won the war, it was absolutely necessary, if the new nation was to endure, that the authority of a strong central government should be paramount and that it should possess the qualities of unity and strength—principles afterwards exemplified by his great opinions in the cases of *McCulloch vs. Maryland, Gibbons vs. Ogden, Marbury vs. Madison* and other cases. He himself said "I went into the war a Virginian, I came out an American." He died July 6, 1835, after thirty-four years of service as Chief Justice, honored and mourned as no other judge in all judicial history. It was written of him when he passed away: "None could name a virtue that did not shine conspicuously in his life and conduct."

Daniel Webster was born of poor parents on a poor New England farm in New Hampshire, January 18, 1782. His father, Ebenezer Webster, a man of strong mind and good character, who had served with credit as a soldier in the Revolutionary War, knew the value of an education and sent his son to the neighborhood schools and then for a short time to Phillips Exeter Academy. Neither the father nor Daniel was satisfied to stop there and between them they managed to get together enough money to pay his expenses at Dartmouth College where he graduated in 1801.

After graduating he got a position as a teacher in Fryeburg, Maine, a town near the New Hampshire line, where he taught for the better part of a year receiving as compensation for his services the sum of $350. He had already made up his mind to be a lawyer; and in compliance with his father's wishes, he began to study law under a Mr. Thompson, an attorney who had an office in the village of Salisbury, next door to the Webster home. In the meantime he heard of an eminent lawyer in Boston, Mr. Gore, and was extremely anxious to finish his

studies in his office. Accordingly he went to Boston, met Mr. Gore, and made known his wishes. At first Mr. Gore was reluctant to comply with his request, but finally, being impressed by young Webster's bearing and intelligence, consented, and in the end, became strongly attached to him and predicted a great future for him at the bar. He remained in Boston until 1805, was admitted to the bar there, and then returned home. About this time a vacancy occurred in the office of the clerk of the court in Merrimac, New Hampshire. There was keen competition for the place due to the fact that the compensation amounted to something like $2,000 a year, which was equal to the average income of the best lawyers in the State. Webster's father promptly applied to the judges of the court of common pleas, who were his friends, to secure the appointment for his son and succeeded. Young Webster was greatly elated when he heard the news. The income from the office exceeded anything he could hope to make as a lawyer for years to come, and would enable him to clear the mortgage from his father's farm and make the last years of his parents comfortable and happy. He immediately announced his good fortune to Mr. Gore who, to Webster's great surprise, urged him not to accept the place. He said "You are poor enough, but there are greater evils than poverty; live on no man's favor; what bread you eat, let it be the bread of independence; pursue your profession, and you have nothing to fear." Webster was dumbfounded. It had never for a moment entered his head to decline the appointment, and for a time he refused to follow his preceptor's advice. Daniel Webster had reached the cross-roads of his life. One way led to a bare competency and obscurity, and the other to fame and fortune. Which would he take?

Gore persisted in his advice and would not let Webster go until he had exacted a promise from him not to accept the clerkship. His decision was a tremendous disappointment to his father who, when he heard of it, looked at his son in amazement and said, "Are you crazy?" and when his son replied that he was acting on Mr. Gore's advice, Mr. Webster said, "No more of your Mr. Gore for me. You have come to nothing."

Daniel then rented an office in the little town of Boscawen, New Hampshire, for which he paid $15 a month rent and practiced there for about two years, earning something like five or six hundred dollars a year. He then moved to Portsmouth where he practiced with great success and was elected to Congress, serving from 1813 to 1817. At the end of his second term he moved to Boston and soon acquired a practice worth $20,000 a year.

It is interesting to speculate as to what would have been the result if young Webster had accepted the clerkship of the Merrimac court. It might have meant that he would never had risen above a clerical position and would never have been heard of beyond the narrow confines of his New England home. On the other hand, Webster was an ambitious man, so well grounded both in literature and in law that he must have felt that success awaited him at the bar. He knew that his preceptor, Mr. Gore, afterwards governor of Massachusetts, felt the same way about it. The situation is reminiscent of these lines from Shakespeare:

"There is a tide in the affairs of men
Which taken at the flood leads on to fortune,
Omitted, all the voyage of their life
Is bound in shallows and miseries."

The Accomplished Lawyer

Submitted by M. A. McKAVITT
Librarian, Department of Justice, Washington, D. C.

IN order to be an accomplished lawyer, it is necessary, besides having a knowledge of the law, to be an accomplished man, graced with at least a general knowledge of history, of science, of philosophy, of the useful arts, of the modes of business, and of everything that concerns the well-being and intercourse of men in society. He ought to be a man of large understanding; he must be a man of large acquirements, and rich in general information; for, he is a priest of the law, which is the bond and support of civil society, and which extends to and regulates every relation of one man to another in that society, and every transaction that takes place in it.

Trained in such a profession, and having these acquirements, and two things more (which can never be omitted from the category of qualifications), incorruptible integrity and a high sense of honor, the true lawyer cannot but be the highest style of a man, fit for any position of trust, public or private; one to whom the community can look up to as a leader and guide; fit to judge and to rule in the highest places of magistracy and government; an honor to himself, an honor to his kind.*

* From "Law, Its Nature and Office as the Bond and Basis of Civil Society." Introductory lecture to the Law Department of the University of Pennsylvania, Wednesday, October 1, 1884, by Joseph P. Bradley, Justice of the Supreme Court.

ICE ORDINANCE—1890 PERIOD

By JUDGE WILLIAM J. WIMBISCUS
CIRCUIT JUDGE, SPRING VALLEY, ILLINOIS

Condensed from Spring Valley Gazette, March 25, 1948

IN THE 1890's when Spring Valley was in its early growing stages, one of the colorful mayors of the times was one Tom B. Jack, the City Clerk being Charlie J. Fay, both reputed then to be operators of the so-called "thirst emporiums" of those days. Those were rough days, no punches were pulled when matters came up for discussion in the City Council. A colorful alderman of the old days was one "Pod" O'Brien. People came to the council meetings just to see him in action.

On one of the occasions of his excursions into the realms of oratory, he picked on John L. Murphy, then City Attorney. It seems that the recently-built Illinois River Bridge was in danger of damage or being carried away by the ice floes in the Illinois River; certainly not a legal problem. However, with O'Brien's desire to put the City Attorney on the spot, and in keeping with the idea of the times, that the "educated man" was the only man who knew what to do in a given situation, he demanded to know what the City Attorney was doing for the salary paid him, and why he, the City Attorney, did not do something about the ice in the river. The alderman very obviously, of course, was barking up the wrong tree, but Murphy, as usual, was equal to the occasion. This definitely was not a legal problem, and "John L." went to work on the "job" with the intent of thoroughly exposing the alderman's untenable position. The result was that the following Monday night when the council convened for business and the City Attorney was asked by the alderman as to what he had to report on the question of the day, John L. had the answer.

John L. Murphy stood up and addressed the Mayor, and after a few brief preliminary remarks, advised "His Honor" and the aldermen, that in response to "Pod" O'Brien's demand for action on the part of the City Attorney, he "John L." thought he had the answer, and submitted for the consideration and passage of the council the following "ice ordinance."

An Ordinance Governing the Movement of Ice on the Illinois River.

Be it Ordained by the Council of the City of Spring Valley, Illinois.

Section 1. That it shall be unlawful from the date of the passage of this ordinance and ten days after the publication thereof, for ice to move down the Illinois River in the vicinity of the Spring Valley Bridge at a rate of speed faster than five (5) miles per hour, calculated in a straight line, allowances to be made for sidewise movement, and reckoning of speed based accordingly.

Section 2. That the provisions of this ordinance shall apply to ice, whether en-masse, in floes of large or small dimensions, in cakes or sections, adhering to each other or otherwise, and whether such ice was formed in distant places, be that in Lake Michigan, or in the Illinois River en route, and through passing through the intervening counties of Cook, Will, Grundy, LaSalle, or elsewhere, and wheresoever such ice may be destined for, be that New Orleans, the Gulf of Mexico, South America, or wheresoever else.

Section 3. That further it shall be unlawful for such ice, in whatsoever form, shape or pattern, in small or large pieces, cakes or sections, singly, en-masse or otherwise, to advance upon the so-called "ice breakers" or the piers of the Illinois River Bridge at Spring Valley, with menacing import or mien, or in an unfriendly manner, and to jar, contact, injure, damage or disturb in any manner such "ice breakers" and such piers, whether such "ice breakers" or piers be peacefully reposed in said stream in said locality, or be they in a state of agitation, gyration, equilibrium of stable or unbalanced status, or otherwise.

Section 4. That the penalties for the violation of this ordinance shall be as set forth in succeeding sections hereof, but that particularly be and it is hereby ordained that there shall be a double penalty for violation hereof during such hours of the day or night that the bridge tender is not on duty on such bridge.

Section 5. That whosoever shall violate this ordinance shall be fined not less than fifty ($50) dollars, nor more than one hundred ($100) dollars, for the first offense, and in double the amount of such fine for each succeeding offense, progressively.

Section 6. PROVIDED, HOWEVER, THAT THIS ORDINANCE SHALL BE INEFFECTIVE DURING THE MONTHS OF JULY AND AUGUST OF EACH YEAR; and further that the provisions hereof shall take effect and become the ordinance of the city from and after publication thereof in the Spring Valley Gazette and after ten days from date of such publication.

Whether such an ordinance was ever presented and passed has been a question of doubt, but about five years ago, about two weeks before he died, Jay L. Spaulding, noted brilliant and able lawyer of Princeton, (a friend of the last Lovejoy of Civil War Underground fame and anti-slavery learnings) during a conversation with a local lawyer, vouched for the fact that John L. Murphy actually drew such an ordinance; and that he brought it over to Princeton, and went over it carefully with Jay L. Spaulding, who made suggestions for changes. Jay Spaulding stated the ordinance was brought back to Spring Valley and presented to the Council, and that the records in the City Clerk's office should show a record thereof. An amusing sidelight—during the conversation with Jay Spaulding, he was asked "Did the ordinance contain a section providing for a penalty in case of violation." He calmly assured the speaker "Oh, yes, indeed so." "Well, Jay, who was to be punished for violation of the ordinance?" To which the reply quickly came. "Well, whoever violated it"—this latter, with a lifting of the eyebrows, and a "wry" smile.

One Day Only

Many of our readers complain of shortages of staff and overwork, and tell us how hard it is to find first-class draftsmen. It is fortunate that the following passage in a draft separation agreement, sent to us by a reader, was noticed before the draft was submitted to the wife's solicitors! "The husband will pay to the wife for her support and maintenance a weekly sum of *xl.* during the joint lives of the parties hereto so long as the wife shall lead a chaste life on the Monday of each week."

Law Notes, England.

Recent Crimes and the Veterans

By HARRY WILLBACH

Condensed from The Journal of Criminal Law and Criminology, January-February, 1948

THERE is a feeling throughout the land that the returned veterans have been engaging in crimes to such an extent as to endanger the very foundation of civil life and safety. Indeed, some people have spread before the public a canvas on which the ex-service man is shown bludgeoning all passers-by and after maiming them, robbing them of their possessions. Another canvas portrays armed men walking along the streets and killing, without cause, anyone who dares to venture out and use a public thoroughfare. And while all this happens it must be presumed that the police stand by fearfully and are unable to protect human life and property!

This, it is said, is a consequence of the war training and war experience of those who had faced danger in order to preserve the culture of their country and the safety and independence of their fellow citizens who for one reason or another did not participate in military activities.

It is reasoned that the returning soldier, having engaged in mass movements to vanquish an enemy, returns home with a new code and a new set of morals plus a knowledge of the use of weapons and a desire to continue adventure and to make a living or amass a fortune by expropriating the property of others.

In support of this contention official statistics are used and a comparison is made between a war year and a post-war year.

During the war men and women were either in the military service or were on the home front aiding in one way or several ways to further the war effort. They were either removed from the civilian population or were kept so busy during their working hours that they were fatigued and didn't possess the energy or the desire to participate in criminal activities.

During the post-war year there was an increase in the civilian population because of the return of the soldier. In addition to this, those who had remained at home were occupied fewer hours daily and had more free time and smaller take-home pay.

These statistics show that in New York City in 1943 the total number of arrests for all offenses was 369,047. In 1946 it rose to 697,734, an increase of 89.1 per cent.

This great increase cannot be dismissed lightly. It requires analysis and study. The basis of the presentation in this arti-

cle will be *persons arrested.* It is admitted that this is not an all inclusive crime figure. It omits an unknown and undetermined number of persons who committed crimes and were not apprehended. It is however the most complete figure that is available. This article is restricted to New York City. Similar studies can and should be made for other localities for which there is available detailed, comparable material over a series of years.

New York City has a highly heterogeneous population who move in a very competitive setting and live in dire poverty or fabulous riches or in any economic state between these two extremes. It is said to contain large numbers of criminals and to offer unlimited temptation both to persons who choose criminal ways and to those who lack inhibitions or codes of conduct which respect and protect the rights and the possessions of others.

"Is that who you are naming as corespondent?"

The term "crime" is usually loosely applied to all acts which may result in arrest. Accepting this view it is found that in New York City in 1946 there were 697,734 arrests—more than 1,900 a day. However, 92 per cent of the arrests were for what the New York City Police Department's annual report classifies as "Offenses against public health, etc." Almost all are minor offenses and close to 80 per cent were for violating various city ordinances relative to the operation and parking of automobiles.

In addition to "offenses against public health, etc." the Department reports list crimes under the general headings of offenses against the person, against chastity, against family and children, against the administration of government, against property rights (with a breakdown of thirteen sub-classes), and general criminality.

In 1946, arrests for all offenses except those against public health, etc., totaled 58,553. We will restrict our analysis to 16,861 of these. This is the number of arrests for crimes against the person, larceny, burglary

and robbery. These four groups are considered crimes in all jurisdictions and have had consistent definitions for a long time. They accounted for close to 30 per cent of all arrests exclusive of those for offenses against the public health.

The annual reports of the New York City Police Department give the ages of persons arrested by five and ten year intervals.

From the data assembled it appears that crime, as reflected by arrests, is not a problem created by the veteran. Crime today is committed much more by teen-agers and youths—persons who had not been in the armed forces because they were too young. Of the persons arrested during 1946 for the four groups of serious offenses studied, about 40 per cent were twenty years old or younger while about 30 per cent were between the ages of twenty-one and thirty.

The only variant from this generalization was among those arrested for "crimes against the person." Here, the age group of twenty-one to thirty showed twice as many arrests as the younger group. However, it cannot be maintained that this indicates the returned veteran is vicious or that his military experience has developed in him a disregard for the rights and safety of others. In the pre-war years this age group (which includes very many persons who were not in uniform) had five times as many arrests for this type of crime as did persons who were under twenty-one years of age.

With the exception of murder, robbery is viewed generally as being the most atrocious of all crimes. The robber is thought of as being fearless and vicious —traits which presumably were instilled in the veteran while he was in service.

Yet, in 1946, with the total number of arrests for this crime at the highest point for the last ten years, it was found that there were 867 arrests of persons twenty years of age or under, and 684 for those be-

tween the ages of twenty-one and thirty.

Making comparisons with the pre-war years of 1936 to 1940 inclusive it is observed that arrests during 1946 for the younger group—those twenty years of age or under—has increased tremendously while for the twenty-one to thirty year group it has decreased. Comparing 1940 with 1946, arrests for the younger group increased 100 per cent, while for those between twenty-one and thirty there was a decrease of 7.2 per cent.

The crime of burglary has generally be considered a crime of the younger offender. In 1946 arrests for this crime showed that 20 per cent were of persons between the ages of twenty-one and thirty, while almost 70 per cent of all of the arrests were of persons twenty years old and younger. And in each of the years from 1936 to 1940, approximately 30 per cent of the persons arrested for burglary were between twenty-one and thirty years of age.

In arrests for larceny during 1946, somewhat less than 30 per cent of the total were between the ages of twenty-one and thirty. This figure does not vary very much from what it was in the five pre-war years of 1936 to 1940. In 1936 the percentage was 29. In the following years it was successively 29, 33, 31, and 32 per cent.

In 1946, arrests for the combined total of the four more serious crimes referred to in the preceding paragraphs showed that almost 40 per cent were twenty years of age or less, while about 30 per cent were between the ages of twenty-one and thirty. In 1940, the latest pre-war year (before the operation of the Selective Service Law), this situation was reversed. During that year the arrests of the twenty-one to thirty age group constituted 44.5 per cent of all arrests for these four crimes while the younger group, those under 21 years of age, ac-

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counted for 32.6 per cent. In each of the four years preceding 1940 the percentage of arrests for the older of these two age groups was considerably in excess of that for the younger—persons twenty years of age and under.

It might be argued that sufficient time has not elapsed since the discharge of the veterans to have indicated clearly the place they will take in society. There is no doubt that with the passage of time, others who were veterans will come into contact with law enforcement agencies. At that time the veterans will be older (and presumably more adjusted and better integrated into the social order). There may be some who will hold that the criminal activities of these persons must be attributed to their previous military experience. To quiet them, it should be stressed that if there is any carry over of asocial conduct it should be expected to make its appearance within a very short period after the return of the veteran to the community.

In the main the veteran is too busy trying to make up for the loss of years from his civilian life. This loss is both in his social life as well as in his industrial and economic status. He has no time for crime. He has no interest in it. He retreats from any activities which may still further retard his readjustment towards assuming and reaching that position in society which is in keeping with his age. All of his energy and resources are being utilized to pick up the loose ends which he left when he entered the service. With all his might and perseverance he is trying to establish himself as a civilian and to further his economic and social life to that position which he feels he would have attained if war had not interrupted his normal peace-time development and progress.

Anniversary Love

An Arkansas jurist came home from the office one evening bring his wife a box of beautiful roses, because it was their fifteenth wedding anniversary.

She was very pleased and happy at so tender an expression.

He told her he felt he could have been more thoughtful and considerate through the years, but he loved her as tenderly as ever and he hoped they might spend many, many years together. Then he added, "Even tho' I may not have been everything I should have been I've never deceived you." Whereupon she added quickly, "No, you haven't but you have thought you have many times!"

Contributed by: Mrs. J. B. Ward,
Russellville, Arkansas.

Legal Realists, Legal Fundamentalists, Lawyer Schools, and Policy Science—or How Not to Teach Law

By FRED RODELL
Professor, Yale University Law School

Reprinted from
Vanderbilt Law Review, Dec., 1947

IT HAS been eleven years since this querulous maverick said Goodbye to Law Reviews—at least so far as leading articles were concerned—and retired into the comparatively open-collared comfort of the book review sections. If I now break, ever so briefly and just this once, that long-kept vow of chastity from formal forays into Scholarship, my fall is reluctant and can be doubly rationalized. In the first place, I didn't fall; I was pushed—by that persuasive fellow, Prof. Hugh Sowards, who gave me seductive assurance that the new law review he is launching at Vanderbilt will bear but slight resemblance to those repositories of pretentious irrelevance and pompous nonsense of which I once washed my hands. In the second place, this little lapse will be no article in its own right but rather a belated and elongated footnote to what I said in the Virginia Law Review back in November, 1936 (advt.). Only because I happen to be allergic to footnotes as such, will this one—with Prof. Sowards' kind indulgence—appear as text.

Increasingly over the past years, there has cropped up in the law reviews a special kind of leading article. It does not deal with anything courts are doing or legislatures are doing or lawyers are doing; it does not even deal with what courts or legislatures or administrators or lawyers ought to be doing; instead, it deals with a subject of apparently endless and obviously narcissistic fascination to the law teachers who write the articles. It deals with the teaching of law. More precisely, these articles are concerned with how the law teachers who write the articles think *other* law teachers ought to teach law. It isn't legal education they're driving at when they tee off for 20 or 120 pages on Legal Education; it isn't the business of educating embryo lawyers. What they're really out to do is educate the legal educators.

Now Legal Education as it is tossed around in the law reviews is something I confess I know next to nothing about. I've been teaching law for going on fifteen years, but if I had tried to keep up with the awesome flood

of free and conflicting advice as to how I *ought* to be teaching law, I'm afraid I should never had had time to prepare my classes. Hence what few remarks I shall make on the subject may be—and doubtless will be—dismissed as sired by envy, conceived in ignorance, and born of malice. Let me start, then with the mild and cautious statement that, judging from the several samples I've read or skimmed through from time to time, the entire alleged literature of Legal Education (including a strictly descriptive job I myself once wrote to make a chapter for a book) could be dumped with a slurping splash into Bikini Atoll, and law teaching, today or ten years from today, would be none the worse for it.

This is not at all to say that I do not have a stray idea or two about how *I* think law ought to be taught—nor that I am numb or neutral to other folks' ideas. The fundamentalists, from Fordham to Fuller, appall me with their authoritarian approach, their consecration to word-magic, their witless unawareness that the law is not a theology but a working tool which must be directed, and better consciously than unconsciously, toward ends outside and beyond its own automatic compass. I have been flattered to be rated and berated as a "legal realist"—though it is scarcely a term of descriptive precision which blankets with a phrase both the i-dotting, t-crossing, pedestrian perfectionism of a Karl Llewellyn and the world-wide sweep and search of a Walton Hamilton. But when, in all the war of words, the avalanche of articles, has one heathen realist ever been converted to the oldtime religion, one fundamentalist swung to functionalism? Who teaches law with a different slant because he read an article about teaching law?

In the current number of my own school paper, the *Yale Law Journal*, two of my close friends and teaching colleagues expatiate separately on Legal Education. Jerome Frank, sparkling and eloquent as ever, plumps for

"lawyer schools" (note the semantic sleight-of-hand) whose emphasis would train men for trial practice and so elevate and improve the neglected but crucial fact-finding function of lower courts. Myres McDougal, ever the progressive planner, would scientifically systematize on a tremendous scale the quest, through law and law schools, for social betterment. Both articles, for my money, add up for the same reason to a waste of paper and of their able authors' otherwise useful energies.

And it would equally be a waste of paper for me to argue here at length what strike me as the weak spots in these two pieces of special pleading. I could snidely suggest to Judge Frank that he has scarcely applied to his pet proposal the seminal and probing skepticism for which he is famous; that neither the root of the evil he deplores nor the road to its reform is to be found in that easy scapegoat, education; that the true villains are a legal system which sticks to an outworn combative method of finding facts and a legal profession which ranks trial practice—prestige-wise and money-wise—at the bottom of the legal ladder. Or I could poke smug fun at Prof. McDougal's earnest search for certainty in the substitution of one logomachy for another; at his seeming belief that the clumsy vocabulary of the so-called social sciences ("utilization" for "use," "implementation" for "working out," "integration" for "putting together") can lend weight or substance or dignity to ideas; at the aroma of authoritarianism, which he would deny, in his or any effort to fit the infinite stuff of humanity into a neatly blue-printed scheme. But to do so would be beside the point as, in fact, this entire paragraph has been beside the point.

The point is that both Judge Frank and Prof. McDougal do beautiful, stimulating, craftsmanlike jobs—each in his own way, each according to his own slants and talents—*in teaching their own courses.* Why in the name of the ghost of Langdell—that first and worst standardizer of law-teaching technique—can't they let it go at that? Why must they try to cram their highly personalized approaches down the craws of other law teachers? I too have a way of teaching law and it works middling well for me. I even venture to say that, judging by our general aims and purposes, Judge Frank and Prof. McDougal and I are pretty definitely on the same team. Like Judge Frank, I am far more concerned with the meat of facts than with the mercury of rules; like Prof. McDougal, I make and express "value judgments" and care deeply about "policy goals," though you'll never catch me talking that kind of language; like both of them, I try to help my students learn to use their own minds in an inquiring way and also to use their legal train-

ing toward something more creative, constructive, and humanitarian then purely private bread-and-butter ends. But I should never have the gall to turn the personal "is" of my way of teaching into a universal or nearly universal "ought." I should never dare nor care to tell any other law teacher how *he* should be teaching law.

The plain fact is that anybody who has to read an article about teaching law to learn how to teach law has no business teaching law—or anything else. The crux, the essence, of every good teacher is his unique and spontaneous individuality, in everything from his mannerisms to the way his mind works. Teachers cannot be molded to pattern like movie stars—and no teacher worth his salt will take his lines or his line of thought on a hand-out or a hand-me-down basis. You can cite me normal schools and teachers' colleges, but even granting—which I don't—that a minimum of forced feeding may be suited to the production of grade-school teachers, it has no proper place in the upper reaches of our educational system. And a law teacher, above all others, should have the insight, the feel, the imagination, the capacity for intellectual self-starting and self-propulsion, to go it all the way on his own.

That is why this sour little screed is subtitled: How Not to Teach Law—meaning, by reading articles on how to teach law. That is why I hold the whole literature of Legal Education to be not only presumptuous but intrinsically useless—except insofar as pedagogical navel-gazing may afford its indulgers some peculiar and ego-soothing pleasure. And on this score I freely grant that it would serve me right if this peevish piece were to be listed in the periodical indices under Legal Education.

Extra Precaution

An old couple sold their farm partly on time, upon the advice of a banker and real estate dealer in another county. The deal was fair and square but the poor old couple had worked so hard and their life savings were all in the farm and they were a bit skeptical. Coming to their lawyer, they said they respected his opinion and went over all the possible pitfalls, etc. Finally the old lady said, "Now you read all these papers and tell us just what you think. We want this deal put through right, we want it fixed up without airy josh or tickle!"

Contributed by: Mrs. J. B. Ward,
Russellville, Arkansas.

Condensed from The Shingle, April, 1948

Spinoza in Litigation

by JOSEPH GROSS
of the Philadelphia (Pa.) Bar

SEVERAL summers ago, I determined once and for all, to take the vacation I had so often promised myself. I packed up hurriedly, and went off to a quiet place where I could rest and read, and then read some more.

Settling down, I began with a life of Spinoza, one of the idols of my youth. In one afternoon I covered 75 pages—it was so fascinating. Suddenly I stopped, as I came to a brief paragraph —about Spinoza's litigation with his sister. I was intrigued. What were the issues of fact? The points of law involved? How did it terminate? These and other questions rushed to my mind. But not a word more in the book.

Our own Free Library had nothing. A trip to New York and several nationally-known libraries produced no information. Even personal letters to the authors I had consulted (about twelve) elicited three replies,—and no information.

One of the librarians I consulted in New York had heard of Dunin Burkovski's four-volume biography in German, recently published, and regarded as the most complete ever written. It even contained a number of documents, photostated. "Try to get it," he urged, adding vernacularly, "if it ain't there, it just ain't, that's all." With his aid I learned of a copy in the Columbia University Library. I went through the books from cover to cover, but added practically nothing to my meagre information.

Hoping against hope, I wrote to the author at Munich, given as his home in the date line of the Preface. Two months later the letter was returned "Undelivered." I have since learned that he died in a concentration camp of an incurable blood infection—a Jewish grandmother.

Stymied again!

I was just about ready to give up in despair, when I read in the Times of the re-opening by the Dutch of the famous Spinoza "huis," supposed to contain numerous relics, original documents and data about the great philosopher. The building had been closed by the Nazis because this honor to a Jew gave the lie to boasted Aryan superiority.

Even more objectionable to them was the fact that the Dutch had come to idolize that Jew as a symbol of liberty. Frequently, in defiance of the Storm Troopers, they would gather around his statue and sing songs of freedom, re-affirming their hope that the world would yet be rid of dictators. They would recite his sentiments, appearing in large letters on the walls of the "huis."

With the defeat of Hitler's forces, so the paper went on to state, the Spinozahuis was rededicated amidst great joy.

Ah, there was my cue! I wrote to the Institution, congratulating the officers upon the reopening of that famous Institution. I concluded with a statement of my problem, and a plea for their aid. In due course, a reply came from a man who had been a keeper of the Museum for years. But most of the documents, especially records of the trial (found by accident in 1932), had been destroyed by the Nazis. There remained only a few documents, secreted at the risk of his life. Fortunately, however, the writer did remember some details which he furnished me. From these, together with the information that I had gleaned from the various books, I made up a mosaic, approximately as follows:

Spinoza's father, a widower, died in 1654, leaving some money. His sister claimed a gift of the fund from her father, made shortly prior to his death. She felt secure in her position. If, perchance, her brother made a contest, he could not hope to win. Who would listen to him, the most hated man in Holland? The Church persecuted him—that "God-intoxicated Jew"—as a blasphemer! His Jewish brethren had disowned him, taking no changes of incurring the enmity of the devout Dutch, then practically the only people who tolerated Jews.

Anyhow, she was certain there would be no contest. Her brother was too busy with his books to bother about lucre. Had he not refused a life-pension offered in return for giving up his attacks upon the Church?

But she did not know her brother any more than she understood his philosophy. To her surprise, Spinoza did institute a contest—and what a contest—up to the highest court in the land. After two years of litigation he obtained a final decision in his favor.

Upon receiving word of the court's ruling, he returned to his writings, stopping only to send his sister word that he wasn't interested in the money involved. She could have all of it, despite the ruling of the court. In fact, if she should ever be in need he stood ready to help her, even out of his own mite. He had contested her claim only because "submission to injustice is to share the guilt with the wrongdoer!"

Thus ended the only litigation to which Spinoza was a party.